



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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December 4, 2003

**MEMORANDUM**

**AGENDA ITEM**  
**For Meeting of: 12-11-03**

TO: Commissioners

FROM: James A. Pehrkon   
Staff Director

SUBJECT: Electioneering Communications Dates

Three comments were received on the Proposed Electioneering Communications Dates: Joseph Sandler, on behalf of the Democratic National Committee (DNC); Lawrence Noble and Paul Sanford, on behalf of the Center for Responsive Politics; and Glen Shor, on behalf of the Campaign Legal Center. These comments are attached for your review.

In response to the DNC's comments, footnote 1 of the chart outlining the Electioneering Communications Dates for Presidential Primary Elections/Caucuses has been modified. The added language further clarifies that some parties have not yet finalized their delegate selection plans, and the chart will be updated as that information becomes available. The change is noted as highlighted text. No other changes have been made.

I recommend that the Commission approve as final the attached Electioneering Communications Dates.



**STATE-BY-STATE ELECTIONEERING COMMUNICATIONS PERIODS FOR  
PRESIDENTIAL PRIMARY ELECTIONS/CAUCUSES<sup>1</sup>**

<b>STATE</b>	<b>PRESIDENTIAL PRIMARY DATE</b>	<b>PRESIDENTIAL CAUCUS DATE</b>	<b>ELECTIONEERING COMMUNICATIONS PERIOD</b>
Alabama	6/1/04		5/2/04-6/1/04
Alaska		3/20/04 (D)	2/19/04-3/20/04
American Samoa		3/8/04 (D)	2/7/04-3/8/04
Arizona	2/3/04		1/4/04-2/3/04
Arkansas	5/18/04		4/18/04-5/18/04
California	3/2/04		2/1/04-3/2/04
Colorado		4/13/04 (D)	3/14/04-4/13/04
Connecticut	3/2/04		2/1/04-3/2/04
D.C.	1/13/04 <sup>2</sup>		12/14/03-1/13/04
D.C.		2/10/04 (R)	1/11/04-2/10/04
D.C.		2/14/04 (D)	1/15/04-2/14/04
Delaware	2/3/04		1/4/04-2/3/04
Florida	3/9/04		2/8/04-3/9/04
Georgia	3/2/04		2/1/04-3/2/04
Guam		<i>pending</i>	
Hawaii		2/24/04 (D)	1/25/04-2/24/04
Idaho		2/24/04 (D)	1/25/04-2/24/04
Idaho	5/25/04		4/25/04-5/25/04
Illinois	3/16/04		2/15/04-3/16/04
Indiana	5/4/04		4/4/04-5/4/04
Iowa		1/19/04	12/20/03-1/19/04
Kansas		3/13/04 (D)	2/12/04-3/13/04
Kentucky	5/18/04		4/18/04-5/18/04
Louisiana	3/9/04		2/8/04-3/9/04
Maine		2/8/04 (D)	1/9/04-2/8/04
Maryland	3/2/04		2/1/04-3/2/04
Massachusetts	3/2/04		2/1/04-3/2/04
Michigan		2/7/04 (D)	1/8/04-2/7/04
Minnesota		3/2/04	2/1/04-3/2/04
Mississippi	3/9/04		2/8/04-3/9/04
Missouri	2/3/04		1/4/04-2/3/04

<sup>1</sup> Because delegate selection rules vary by state and by party, some election, caucus and convention dates are not yet available, and the published dates are subject to change. In some states, for example, one or both major parties intend to hold caucuses but have not finalized their plans. To account for these and other similar situations, this chart will be updated as additional information becomes available.

<sup>2</sup> This date applies only to third party candidates.

**STATE-BY-STATE ELECTIONEERING COMMUNICATIONS PERIODS FOR  
PRESIDENTIAL PRIMARY ELECTIONS/CAUCUSES<sup>1</sup> (continued)**

<b>STATE</b>	<b>PRESIDENTIAL PRIMARY DATE</b>	<b>PRESIDENTIAL CAUCUS DATE</b>	<b>ELECTIONEERING COMMUNICATIONS PERIOD</b>
Montana	6/8/04		5/9/04-6/8/04
Nebraska	5/11/04		4/11/04-5/11/04
Nevada		2/14/04 (D)	1/15/04-2/14/04
New Hampshire	1/27/04		12/28/03-1/27/04
New Jersey	6/8/04		5/9/04-6/8/04
New Mexico		2/3/04 (D)	1/4/04-2/3/04
New Mexico	6/1/04		5/2/04-6/1/04
New York	3/2/04		2/1/04-3/2/04
North Carolina	5/4/04		4/4/04-5/4/04
North Dakota		2/3/04	1/4/04-2/3/04
Ohio	3/2/04		2/1/04-3/2/04
Oklahoma	2/3/04		1/4/04-2/3/04
Oregon	5/18/04		4/18/04-5/18/04
Pennsylvania	4/27/04		3/28/04-4/27/04
Puerto Rico		6/6/04 (D)	5/7/04-6/6/04
Rhode Island	3/2/04		2/1/04-3/2/04
South Carolina	2/3/04 (D)		1/4/04-2/3/04
South Dakota	6/1/04		5/2/04-6/1/04
Tennessee	2/10/04		1/11/04-2/10/04
Texas	3/9/04		2/8/04-3/9/04
Utah	2/27/04 <sup>2</sup>		1/28/04-2/27/04
Utah		2/24/04 (D)	1/25/04-2/24/04
Vermont	3/2/04		2/1/04-3/2/04
Virgin Islands		4/17/04 (D)	3/18/04-4/17/04
Virginia	2/10/04		1/11/04-2/10/04
Washington		2/7/03 (D)	1/8/04-2/7/04
Washington	3/2/04		2/1/04-3/2/04
West Virginia	5/11/04		4/11/04-5/11/04
Wisconsin	2/17/04		1/18/04-2/17/04
Wyoming		5/15/04 (D)	4/15/04-5/15/04

<sup>1</sup> Because delegate selection rules vary by state and by party, some election, caucus and convention dates are not yet available, and the published dates are subject to change. In some states, for example, one or both major parties intend to hold caucuses but have not finalized their plans. To account for these and other similar situations, this chart will be updated as additional information becomes available.

<sup>3</sup> In Utah, the holding of the Presidential primary election is dependent upon funding by the legislature.

**ELECTIONEERING COMMUNICATIONS PERIODS FOR  
NATIONAL PARTY CONVENTIONS<sup>4</sup>**

<b>PARTY</b>	<b>CONVENTION DATES</b>	<b>ELECTIONEERING COMMUNICATIONS PERIOD</b>
Democrat	7/26/04-7/29/04	6/26/04-7/29/04
Green	6/24/04-6/27/04	5/25/04-6/27/04
Libertarian	5/27/04-5/31/04	4/27/04-5/31/04
Republican	8/28/04-9/2/04	7/29/04-9/2/04

<sup>4</sup> This chart will be updated as information on the dates for additional national party conventions becomes available.

**STATE-BY-STATE ELECTIONEERING COMMUNICATIONS PERIODS FOR  
CONGRESSIONAL PRIMARY AND PRIMARY RUNOFF ELECTIONS<sup>1</sup>**

<b>STATE</b>	<b>PRIMARY DATE</b>	<b>ELECTIONEERING COMMUNICATIONS PERIOD (PRIMARY)</b>	<b>PRIMARY RUNOFF DATE</b>	<b>ELECTIONEERING COMMUNICATIONS PERIOD (RUNOFF)</b>
Alabama	6/1/04	5/2/04-6/1/04	6/29/04	5/30/04-6/29/04
Alaska	8/24/04	7/25/04-8/24/04		
American Samoa	11/2/04	10/3/04-11/2/04	11/16/04	10/17/04-11/16/04
Arizona	9/7/04	8/8/04-9/7/04		
Arkansas	5/18/04	4/18/04-5/18/04	6/8/04	5/9/04-6/8/04
California	3/2/04	2/1/04-3/2/04		
Colorado	8/10/04	7/11/04-8/10/04		
Connecticut	8/10/04 <sup>2</sup>	7/11/04-8/10/04		
D.C.	9/14/04	8/15/04-9/14/04		
Delaware	9/11/04	8/12/04-9/11/04		
Florida	8/31/04	8/1/04-8/31/04		
Georgia	7/20/04	6/20/04-7/20/04	8/10/04	7/11/04-8/10/04
Guam	9/4/04	8/5/04-9/4/04		
Hawaii	9/18/04	8/19/04-9/18/04		
Idaho	5/25/04	4/25/04-5/25/04		
Illinois	3/16/04	2/15/04-3/16/04		
Indiana	5/4/04	4/4/04-5/4/04		
Iowa	6/8/04	5/9/04-6/8/04		
Kansas	8/3/04	7/4/04-8/3/04		
Kentucky	5/18/04	4/18/04-5/18/04		
Louisiana	8/6/04 <sup>3</sup>	7/7/04-8/6/04	12/4/04 <sup>3</sup>	10/5/04-12/4/04
Maine	6/8/04	5/9/04-6/8/04		
Maryland	3/2/04	2/1/04-3/2/04		
Minnesota	9/14/04	8/15/04-9/14/04		
Mississippi	3/9/04	2/8/04-3/9/04	3/30/04	2/29/04-3/30/04

<sup>1</sup> Election dates are subject to change. This chart will be updated as additional information becomes available.

<sup>2</sup> In Connecticut and Utah, conventions are held by the political parties prior to the primary. In Virginia, parties may choose to nominate by convention rather than by primary election. (In other states, such as Indiana, Kansas, Michigan, South Carolina, Texas and West Virginia, it is possible that minor parties may schedule conventions to nominate candidates.)

<sup>3</sup> In Advisory Opinion 2000-29, the Commission determined that the last day to qualify for a position on the general election ballot in Louisiana--in this case 8/6/04-- must be considered the primary election date for Louisiana candidates. See 11 CFR 100.2(c)(4)(i). The election for candidates seeking federal office is the general election scheduled for 11/2/04. If necessary, a runoff election will be held on 12/4/04.

**STATE-BY-STATE ELECTIONEERING COMMUNICATIONS PERIODS FOR  
CONGRESSIONAL PRIMARY AND PRIMARY RUNOFF ELECTIONS<sup>1</sup>**  
(continued)

STATE	PRIMARY DATE	ELECTIONEERING COMMUNICATIONS PERIOD (PRIMARY)	PRIMARY RUNOFF DATE	ELECTIONEERING COMMUNICATIONS PERIOD (RUNOFF)
Missouri	8/3/04	7/4/04-8/3/04		
Montana	6/8/04	5/9/04-6/8/04		
Nebraska	5/11/04	4/11/04-5/11/04		
Nevada	9/7/04	8/8/04-9/7/04		
New Hampshire	9/14/04	8/15/04-9/14/04		
New Jersey	6/8/04	5/9/04-6/8/04		
New Mexico	6/1/04	5/2/04-6/1/04		
New York	9/15/04	8/16/04-9/15/04		
North Carolina	5/4/04	4/4/04-5/4/04		
North Dakota	6/8/04	5/9/04-6/8/04		
Ohio	3/2/04	2/1/04-3/2/04		
Oklahoma	7/27/04	6/27/04-7/27/04	8/24/04	7/25/04-8/24/04
Oregon	5/18/04	4/18/04-5/18/04		
Pennsylvania	4/27/04	3/28/04-4/27/04		
Puerto Rico	11/9/03	10/10/03-11/19/03		
Rhode Island	9/14/04	8/15/04-9/14/04		
South Carolina	6/8/04	5/9/04-6/8/04	6/22/04	5/23/04-6/22/04
South Dakota	6/1/04	5/2/04-6/1/04	6/15/04	5/16/04-6/15/04
Tennessee	8/5/04	7/6/04-8/5/04		
Texas	3/9/04	2/8/04-3/9/04	4/13/04	3/14/04-4/13/04
Utah	6/22/04 <sup>2</sup>	5/23/04-6/22/04		
Vermont	9/14/04	8/15/04-9/14/04		
Virgin Islands	9/11/04	8/12/04-9/11/04		
Virginia	6/8/04 <sup>2</sup>	5/9/04-6/8/04		
Washington	9/14/04	8/15/04-9/14/04		
West Virginia	5/11/04	4/11/04-5/11/04		
Wisconsin	9/14/04	8/15/04-9/14/04		
Wyoming	8/17/04	7/18/04-8/17/04		

<sup>1</sup> Election dates are subject to change. This chart will be updated as additional information becomes available.

<sup>2</sup> In Connecticut and Utah, conventions are held by the political parties prior to the primary. In Virginia, parties may choose to nominate by convention rather than by primary election. (In other states, such as Indiana, Kansas, Michigan, South Carolina, Texas and West Virginia, it is possible that minor parties may schedule conventions to nominate candidates.)

**SANDLER, REIFF & YOUNG, P.C.**

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December 2, 2003

Liz Kurland  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Ms. Kurland:

Following up our discussion yesterday, on behalf of our client, the Democratic National Committee ("DNC"), we would like to call your attention to several mistakes or unclear references contained in the Commission's document, "Proposed Coverage Periods for Electioneering Communications Made on Behalf of 2004 Presidential Candidates." These items are as follows:

- (1) The Commission's document lists the "District of Columbia Presidential Primary" as taking place on January 13, 2004. For the Democratic Party, this is a non-binding primary; no delegate positions whatsoever will be allocated based on the results of this primary. Thus, this event is clearly not a "primary or preference election...for the office sought by" any of the candidates for the Democratic nomination for President, within the meaning of 2 U.S.C. §434(f)(3)(A)(i)(III)(bb). The Commission's document should therefore indicate, in some way, that this date does not create any electioneering communications window with respect to communications referring to any such Democratic candidate.
- (2) The Commission's document correctly lists the New Mexico Democratic caucuses as taking place on February 3, 2004, but also lists the "New Mexico Presidential Primary" as taking place on June 1, 2004. Again, the June 1 primary is not a binding event for the Democratic Party and therefore does not create any electioneering communications window with respect to communications referring to a candidate for the Democratic nomination for President. The document should also make clear when the binding Republican event will take place.



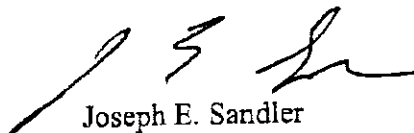
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- (3) The Commission's documents lists a "Utah Presidential Primary" as possibly taking place on February 27, 2004. There will in fact be no state-run presidential preference primary in Utah. The only presidential preference event, for the Democratic Party, will be the party-run primary on February 24, 2004, which is correctly listed on the Commission's document.
- (4) The Commission's document lists a state-run presidential primary for Washington State to take place on March 2, 2004. That primary is going to be cancelled because neither the Republican nor the Democratic Party will be participating. The binding event for the Democratic Party will be the caucuses on February 7, 2004, correctly listed on the document. The document should, of course, also list the Republican event, for the sake of completeness.

Thank you very much for your time and attention to these matters and if you have any questions or need further information concerning the above, please do not hesitate to call me.

With kind regards,

Sincerely yours,



Joseph E. Sandler

cc: Phil McNamara, Director, DNC Party Affairs & Delegate Selection  
Neil Reiff, Esq.



December 2, 2003

**VIA E-MAIL**

James A. Pehrkon  
Staff Director  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Re: 30-day disclosure periods for electioneering communications

Dear Mr. Pehrkon:

Thank you for your letter of November 7, 2003 inviting us to comment on your proposed 30-day disclosure periods for the primary elections to be held in 2004. We have the following brief comments on the questions raised in your letter. We recognize that these comments are late, and apologize for the delay. We hope you will still find them useful.

You ask how the Commission should determine the disclosure period for two types of states: (1) those that have not yet finalized their primary, caucus or convention procedures; and (2) those that may not hold primaries at all. You also ask whether the application of the 30-day disclosure period is affected by the status of delegates as bound or unbound to particular candidate under state law. We will address these questions in turn.

For a state that has not yet finalized its primary, caucus or convention plans, the Commission appears to have little choice but to wait until the state finalizes its plans, and then determine the start and end of the 30-day period using the date announced. If a state announces a primary date that is less than thirty days in the future, the 30-day period should begin immediately when the state announces the date. Entities that purchase broadcast time in a jurisdiction before the jurisdiction has settled on a primary date must be prepared to disclose or withdraw those ads if the state announces a primary date that puts the ads inside the 30-day period.

In states that do not hold primaries, there does not appear to be any way to set a 30-day pre-primary disclosure period. However, the nationwide 30-day pre-convention period in 11 CFR 100.29(b)(3)(ii)(B) would still apply.

We interpret your question regarding unbound delegates to be asking when the 30-day period should begin and end in a state that holds a primary, but whose delegates are unbound under state law, and thus remain potentially "in play" after the primary is over. Our comments are based on this interpretation.

Interested groups may have an incentive to continue disseminating electioneering communications after the primary date in "unbound" states, since they may still be able to influence these delegates' votes at the convention. However, the statute uses the primary date as the controlling date for purposes of the 30-day period, and does not take into account the status of delegates after that date. Thus, the Commission may not have the authority to take the delegates' status into account in determining the start and end dates for the 30-day disclosure period. Fortunately, the nationwide pre-convention period in 11 CFR 100.29(b)(3)(ii)(B) will encompass the period when many electioneering communications directed at unbound delegates would be disseminated. Thus, these communications would be subject to the disclosure requirements and electioneering communications prohibitions in BCRA.

We appreciate the opportunity to comment on the application of the 30-day disclosure periods.

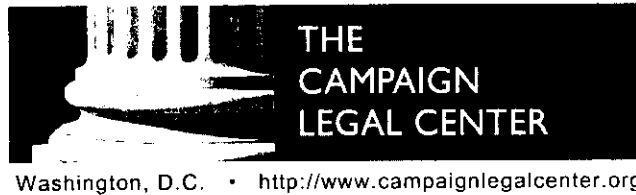
Respectfully submitted,



Lawrence Noble  
Executive Director  
Center for Responsive Politics



Paul Sanford  
General Counsel  
Center for Responsive Politics



November 26, 2003

James A. Pehrkon  
Staff Director  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Dear Mr. Pehrkon:

I am writing on behalf of the Campaign Legal Center in response to your correspondence concerning application of the electioneering communications rules of the Bipartisan Campaign Reform Act of 2002 (BCRA).

Your correspondence inquired as to how the Commission should proceed under BCRA with respect to those states that have not yet finalized their primary, caucus, or convention procedures, or that may or may not hold primaries depending on whether funding is provided by the legislature. It also asked, "does it matter under BCRA whether the delegates that are selected are bound under state law (and therefore are required to vote for a particular presidential candidate at the national convention) or are unbound?"

With respect to those states that have not yet finalized their primary, caucus or convention procedures, the Commission should, through its website, monthly newsletter and other readily available means, publicize when a state in this category has in fact finalized those procedures. Likewise, it should publicize information as to whether a state has opted not to use primary procedures to select delegates to a national nominating convention or express a preference for the nomination of presidential candidates (these states will then typically resort to caucus procedures).

Moreover, the electioneering communications requirements of BCRA do not turn on whether or not delegates that are selected are bound under state law to vote for a particular presidential candidate at the national convention. The 30-day disclosure periods and corresponding prohibition on the use of corporate and labor treasury funds to finance electioneering communications apply in a given state whether or not the delegates selected are "bound" or "unbound" under state law.

Thank you in advance for your consideration of these comments.

Sincerely,

*/s/ Glen Shor*

Glen Shor  
FEC Program Director

